

of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, have not had and could not reasonably be expected to have a Purchaser Material Adverse Effect

6.04 Governmental Filings, Consents. No Consent of, or registration, declaration or filing with, any Governmental Authority or third party is required to be obtained or made by or with respect to Purchaser or any of its Subsidiaries in connection with the execution, delivery and performance by Purchaser of this Agreement or any Ancillary Agreement or the consummation of the Acquisition or the other transactions contemplated hereby and thereby, other than (i) compliance with and filings under the HSR Act and similar foreign competition regulations, (ii) compliance with and filings, if any, under Section 13(a) of the Exchange Act, (iii) filings with and approvals of the FCC as required under the Communications Act, (iv) those that may be required solely by reason of the participation of Sellers (as opposed to any other third party) in the Acquisition and other transactions contemplated hereby and by the Ancillary Agreements or (v) any Consent, registration, declaration or filing, the failure of which to be obtained or made, individually or in the aggregate, could not reasonably be expected to have a Purchaser Material Adverse Effect.

6.05 Litigation. There are no (i) outstanding Judgments against Purchaser or any of its Subsidiaries, (ii) Proceedings pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Subsidiaries or (iii) investigations by any Governmental Authority that are pending or, to the Knowledge of Purchaser, threatened against Purchaser or any of its Subsidiaries that, in any case, individually or in the aggregate, have had or could reasonably be expected to have a Purchaser Material Adverse Effect

6.06 Financing. Purchaser has cash in immediately available funds or has the ability to make unrestricted draws under existing borrowing facilities that together are sufficient to enable Purchaser to pay the Purchase Price

6.07 Brokers or Finders. Purchaser has no liability to any agent, broker, investment banker or other firm or Person for any broker's or finder's fee or any other commission or similar fee in connection with the Acquisition or the other transactions contemplated hereby for which Sellers could become liable or obligated.

## ARTICLE VII COVENANTS

7.01 Operation of Acquired Assets Prior to Closing. Except for matters set forth on Schedule 7.01 or as otherwise expressly permitted or required by the terms of this Agreement, or with the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed, from the date of this Agreement to the Closing Date, subject to the limitations imposed on Sellers as a result of having filed petitions for relief under the Bankruptcy Code, Sellers shall operate and maintain the Acquired Assets in the ordinary course consistent with past practice, and will use commercially reasonable efforts to preserve intact satisfactory relationships with (i) the lessors under the Real Property Leases and Acquired Spectrum Leases, and (ii) the counterparties to the Assigned Contracts. In addition (and without limiting the generality of the foregoing), except as set forth on Schedule 7.01 or as otherwise

expressly permitted or required by the terms of this Agreement, during the period from the date of this Agreement to the Closing Date, Sellers shall not do any of the following in connection with the Acquired Assets without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.

(a) fail to maintain all of the physical Acquired Assets in good operating condition (ordinary wear and tear excepted), and in a state of repair and condition that complies with applicable Law;

(b) disconnect, remove or dispose of any of the equipment of Sellers used in connection with the operation of the Company FCC Licenses, Third Party Licenses and Leased FCC Licenses; *provided, however*, that notwithstanding the foregoing, upon the consent of Purchaser, which consent shall not be unreasonably withheld or delayed, Sellers shall be permitted to discontinue or terminate operations of, and/or disconnect, remove or dispose of equipment associated with, the Company FCC Licenses, Third Party Licenses and Leased FCC Licenses at any time and from time to time consistent with any FCC Rule or order that permits such actions without risk of forfeiture or cancellation of such licenses,

(c) fail to pay the rent or other costs and expenses payable in relation to the Acquired Spectrum Leases and Real Property Leases on a timely basis in the ordinary course of business, consistent with past practice;

(d) create or permit to exist any Lien on any of the Acquired Assets, other than Permitted Encumbrances arising in the ordinary course of business and any Lien which will be released or terminated at or prior to the Closing;

(e) terminate, adversely amend or modify, renew, extend, exercise any option or rights of first refusal, agree to a novation of or waive or relinquish any material rights under any material Assigned Contract,

(f) subject to Section 7.22, terminate, adversely amend or modify, renew, extend, exercise any option or rights of first refusal, agree to a novation of, or waive or relinquish any material rights under, any Acquired Spectrum Lease or Real Property Lease, or allow, suffer or permit any default of any Seller under any Acquired Spectrum Lease or Real Property Lease;

(g) enter into any leasing or licensing agreements, take-or-pay arrangements or similar affiliations, alignments or agreements with respect to the use of any Acquired Spectrum Leases or Real Property Leases, or sell, convey, assign, lease, or grant rights with respect to, sublease, license or otherwise transfer or dispose of (i) any Acquired Spectrum Lease, (ii) any Real Property Lease, (iii) any Tower Asset, except disposals of obsolete Tower Site equipment in the ordinary course of business consistent with past practice, and provided that Sellers may deploy inventory in the ordinary course of business, consistent with past practice, in connection with the operation of the Company FCC Licenses, Third Party Licenses and Leased FCC Licenses or any other aspects of the Business that Purchaser is not purchasing under this Agreement, or (iv) any other material asset or property of any of Sellers constituting the Acquired Assets,

(h) waive or relinquish any material right or claim with respect to any other Acquired Assets, in the ordinary course of business consistent with past practice;

(i) if any loss, damage, impairment, confiscation, or condemnation of or to any of the physical Acquired Assets occurs, fail to use their commercially reasonable efforts to promptly repair, replace or restore such physical Acquired Assets to their prior condition as soon as reasonably practicable thereafter, and, subject to Section 2.08, to use the proceeds of any claim under any insurance policy or any condemnation award to replace such physical Acquired Assets that are lost, damaged, impaired, destroyed, confiscated or condemned;

(j) fail to maintain insurance policies on each of the Tower Assets consistent with current practices;

(k) agree to do any of the foregoing, or

(l) knowingly take any action or knowingly omit to take any action, which action or omission, if taken prior to, on or after the date hereof, would result in a Sellers Material Adverse Effect.

#### 7.02 Access to Information, Site Inspections.

(a) During the period from the date of this Agreement to the Closing Date, Sellers shall afford to Purchaser and its authorized Representatives reasonable access, upon reasonable notice and during normal business hours, to senior personnel responsible for, and business records predominantly and directly related to, the use or operation of the Acquired Assets, and during such period shall furnish promptly to Purchaser any information concerning the Acquired Assets as Purchaser may reasonably request; *provided, however*, that in no event shall Sellers be obligated to provide (i) access or information in violation of Law, (ii) copies of bids, letters of intent, expressions of interest or other proposals received from other Persons in connection with the transactions contemplated by this Agreement or information and analysis relating to such communications, or (iii) any information the disclosure of which would jeopardize any privilege available to any Seller or any of their respective Affiliates relating to such information or would cause any Seller or any of their respective Affiliates to breach a confidentiality obligation to which it is bound. In connection with providing such access, Purchaser shall cooperate with Sellers so as to ensure that such access does not unreasonably interfere with the use or operation of the Acquired Assets or with Sellers' customer or employee relations.

(b) During the period from the date of this Agreement to the Closing Date, Purchaser and its authorized Representatives shall have the right to enter the properties or sites that are the subject of the Ground Leases and Sellers shall use commercially reasonable efforts to obtain consent for the entry of such persons on the properties or sites that are the subject of the Tower Site Leases, in each case for purposes of inspecting such premises or sites and the improvements thereon (as used in this sentence, the term "improvements" shall mean and refer to any improvements whatsoever (including Transmission Towers, tower equipment, antennas, buildings, fixtures and other Tower Assets), inspecting the equipment of Sellers thereon, making

surveys, mechanical and structural engineering studies, environmental assessments, and any other investigations and inspections as Purchaser may reasonably require to assess the condition thereof or the extent of compliance with any applicable Law, Permit or Contract or any representation, warranty, covenant or agreement of Sellers. In conducting such inspections, Purchaser shall not undertake or authorize (i) any activities that interfere with or impair the activities being conducted at the sites (whether by Sellers or third parties), (ii) any intrusive soil or groundwater sampling or analysis, unless Sellers have obtained the necessary consents or approvals as contemplated by the last sentence of this Section 7.02(b) or (iii) any mechanical and structural engineering studies in relation to the towers that are the subject of the Tower Site Leases, unless Sellers have obtained the necessary consents or approvals as contemplated by the last sentence of this Section 7.02(b). Purchaser shall indemnify Sellers and their respective Affiliates and their respective successors and assigns, against, and hold them harmless from, any Losses suffered or incurred, to the extent caused by the activities of Purchaser or its Representatives on the sites. Purchaser shall notify Sellers or their designee in writing not less than 48 hours prior to entering any site pursuant to this Section 7.02(b). Sellers shall use commercially reasonable efforts to obtain any necessary consents and approvals from lessors under the Ground Leases and Tower Site Leases in connection with any environmental assessment or other inspection activities pursuant to this Section 7.02(b) that Purchaser requests to perform.

#### 7.03 Hart-Scott-Rodino Filing

(a) Each of Purchaser and Sellers shall as promptly as practicable, but in no event later than ten (10) Business Days following the entry of the Approval Order, cause to be filed with the United States Federal Trade Commission (the “FTC”) and the United States Department of Justice (the “DOJ”) the notification and report form required pursuant to the HSR Act for the Acquisition and the other transactions contemplated hereby and any supplemental information requested in connection therewith pursuant to the HSR Act. Any such notification and report form and supplemental information shall be in substantial compliance with the requirements of the HSR Act. Purchaser and Sellers shall furnish to each other such necessary information and reasonable assistance as the other may request in connection with the preparation of any filing or submission that is necessary under the HSR Act. Purchaser and Sellers shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ and shall comply promptly with any such inquiry or request and shall promptly provide any supplemental information requested in connection with the filings made hereunder pursuant to the HSR Act. Any such supplemental information shall be in substantial compliance with the requirements of the HSR Act. Sellers, on the one hand, and Purchaser, on the other, shall each bear and pay 50% of all filing fees required to be made by any of the parties in connection with compliance with the HSR Act.

(b) Each of Purchaser and Sellers shall use commercially reasonable efforts to obtain any clearance required under the HSR Act for the consummation of the Acquisition and the other transactions contemplated by this Agreement. Schedule 7.03(b) sets forth certain matters that will constitute the “commercially reasonable efforts” of Purchaser for purposes of this Section 7.03(b).

#### 7 04 FCC Filings

(a) Not later than five (5) Business Days following the date of entry of the Approval Order, Purchaser and Sellers shall file or cause to be filed with the FCC all appropriate applications with respect to the assignment to Purchaser of the then-existing Company FCC Licenses and the amendment of the then-existing Company Pending Applications to specify Purchaser as the applicant as of the Closing. During the period from the date of entry of the Approval Order to the Closing Date, promptly after any other FCC authorization or application becomes a Company FCC License or Company Pending Application, as applicable, Purchaser and Sellers shall file or cause to be filed with the FCC the aforementioned assignment applications and filings with respect to such FCC authorizations and applications. The FCC authorizations and applications referred to in the preceding sentences of this Section 7 04(a) are hereinafter referred to as the "FCC Assignment Applications"). The FCC Assignment Applications and any supplemental information furnished in connection therewith shall be in substantial compliance with the FCC Rules or be responsive to a request of the FCC.

(b) Purchaser and Sellers shall furnish to each other such necessary information and reasonable assistance as the other may request in connection with the preparation, filing and prosecution of the FCC Assignment Applications. Purchaser and Sellers shall bear their own expenses in connection with the preparation, filing and prosecution of the FCC Assignment Applications, *provided, however*, that all filing fees and similar out-of-pocket costs incurred in connection therewith shall be borne by Purchaser. Purchaser and Sellers shall each use their commercially reasonable efforts to prosecute the FCC Assignment Applications in good faith and with due diligence before the FCC, and shall furnish to the FCC any documents, materials, or other information requested by the FCC in order to obtain such approvals as expeditiously as practicable.

(c) No party hereto shall knowingly take any action if the intent or reasonably anticipated consequence of such action is, or would be, to cause the FCC not to grant approval of any FCC Assignment Application or to materially delay either such approval or the consummation of the Acquisition, the assignment of the Company FCC Licenses to Purchaser or the amendment of the Company Pending Applications to specify Purchaser as the applicant as of the Closing. If the Closing shall not have occurred for any reason within any applicable consummation period set forth on the FCC's approval of any FCC Assignment Application, and neither Purchaser nor Sellers shall have terminated this Agreement pursuant to Article IX, then Purchaser and Sellers shall request one or more extensions of reasonable duration of the consummation period of such approval. In the event that the FCC's approval of any FCC Assignment Application shall be the subject of an Appeal, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend diligently and in good faith such Appeal.

7 05 Third Party Consents During the period from the date of this Agreement until 90 days after the Closing Date, Purchaser, on the one hand, and Sellers, on the other hand, will cooperate and use their respective commercially reasonable efforts to obtain any consents, approvals and waivers required from third parties to assign, convey, transfer and deliver the Acquired Assets to Purchaser (to the extent such consents, approvals and waivers are required notwithstanding the entry of the Approval Order), *provided, however*, that neither Purchaser nor

Sellers shall be required to expend any material sum, make a material financial commitment or grant or agree to any material concession in order to obtain any such required consent, approval or waiver. If any required consent, approval or waiver is not obtained prior to or within 90 days after the Closing Date, the parties shall (at their own expense) use commercially reasonable efforts, if requested by Purchaser, to implement an arrangement, reasonable and lawful as to both Purchaser and Sellers, designed to afford to Purchaser the economic benefits of the affected Acquired Assets, if any.

7.06 Commercially Reasonable Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto shall use their respective "commercially reasonable efforts" to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, all things necessary, proper or advisable under Laws to ensure that (i) the conditions set forth in this Agreement are satisfied, (ii) to consummate and make effective, in the most expeditious manner practicable, the Acquisition and the other transactions contemplated hereby and (iii) each of the FCC Assignment Applications is approved by the FCC by Final Order (unless waived by Purchaser). For purposes of this Agreement, "commercially reasonable efforts" means the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible; *provided, however*, that a Person required to use commercially reasonable efforts under this Agreement will not be thereby required to take actions that would result in a material adverse change in the benefits to such Person of this Agreement and the Acquisition or, subject to Section 7.03(b), to dispose of any Acquired Asset, expend any material sum or incur any other material burden.

(b) Without limiting the generality of the foregoing, the parties hereto shall furnish to each other such necessary information and reasonable assistance, as each may request in connection with the preparation, filing and prosecution of applications and motion papers, including the Sale Motion and FCC Assignment Applications, needed to obtain Bankruptcy Court and FCC approval by Final Order of the FCC Assignment Applications, and shall execute any additional documents and instruments necessary to consummate the transactions contemplated hereby, whether before or after the Closing.

7.07 Notification of Certain Matters. Sellers shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Sellers, of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Acquisition or the transactions contemplated hereby and (ii) any written objection, litigation or administrative proceeding that challenges the Acquisition or the transactions contemplated hereby or the entry of the Approval Order.

7.08 Maintenance of FCC Licenses

(a) Sellers shall

(i) use commercially reasonable efforts to maintain in full force and effect all Company FCC Licenses, and timely and materially comply with FCC Rules, including the filing of Annual FCC Reports,

(ii) except for those Company Pending Applications that request additional time to complete construction of facilities authorized under Acquired BTA Licenses, use commercially reasonable efforts to prosecute and defend diligently and in good faith each Company Pending Application;

(iii) (A) use commercially reasonable efforts to enforce all of its rights under each Acquired Spectrum Lease on a timely basis; (B) not enter into any agreement on or with respect to spectrum capacity under any Company FCC License without the prior consultation with and the prior approval of Purchaser, such approval not to be unreasonably withheld, and (C) not enter into any agreements to accept harmful interference as prescribed by the FCC Rules in connection with any Company FCC License without the prior consultation with and the prior approval of Purchaser, such approval not to be unreasonably withheld; and

(iv) not seek the modification of any Company FCC License, except for such modifications as are specifically approved by Purchaser, are authorized by this Agreement, are required by FCC Rules or which become authorized pursuant to Company Pending Applications

(b) Sellers shall use commercially reasonable efforts, in the ordinary course of business consistent with past practices, to ensure that third party lessors under Acquired Spectrum Leases:

(i) maintain in full force and effect all Leased FCC Licenses, and timely and materially comply with FCC Rules, including the filing of Annual FCC Reports,

(ii) prosecute and defend diligently and in good faith each Leased Pending Application,

(iii) (A) not enter into any agreement regarding or with respect to its proposed or authorized ITFS or MMDS spectrum capacity for the system to which the Acquired Spectrum Lease relates, (B) not enter into any agreement regarding or with respect to spectrum capacity under any Leased FCC License without the prior consultation with and the prior approval of Sellers; and (C) not enter into any agreements to accept harmful interference as prescribed by the FCC Rules in connection with any Leased FCC License without the prior consultation with and the prior approval of Sellers; and

(iv) (A) not seek to modify any Leased FCC License, except for such modifications as are specifically approved by Purchaser, are authorized by this Agreement, are required by FCC Rules or which become authorized pursuant to Leased

Pending Applications, and (B) prevent the new application, or amendment to any Leased Pending Application, except (x) as specifically required by the terms of the Leased FCC Licenses, (y) as required by the terms of an applicable Leased FCC License or as requested by the FCC, or (z) as may be reasonably required to operate the facilities proposed in such Leased Pending Application.

(c) Sellers shall use commercially reasonable efforts, in accordance with the ordinary course of business consistent with past practices, to ensure that Sellers and the counterparties, as the case may be, to the Third Party Licenses:

(i) maintain in full force and effect all Third Party Licenses, and timely and materially comply with FCC Rules, including the filing of Annual FCC Reports;

(ii) prosecute and defend diligently and in good faith each Third Party Pending Application,

(iii) (A) not enter into any agreement regarding or with respect to its proposed or authorized ITFS or MMDS spectrum capacity for the system to which the Third Party License relates; (B) not enter into any agreement regarding or with respect to spectrum capacity under any Third Party License without the prior consultation with and the prior approval of Purchaser, and (C) not enter into any agreements to accept harmful interference as prescribed by the FCC Rules in connection with any Third Party License without the prior consultation with and the prior approval of Purchaser; and

(iv) (A) not seek to modify any Third Party License, except for such modifications as are specifically approved by Purchaser, are authorized by this Agreement, are required by FCC Rules or which become authorized pursuant to Third Party Pending Applications, and (B) prevent the new application, or amendment to any Third Party Pending Application, except (w) as specifically required by the terms of the agreement by which Sellers have agreed to acquire the Third Party Licenses, (x) as required by the terms of an applicable Third Party License, (y) as requested by the FCC, or (z) as may be reasonably required to operate the facilities proposed in such Third Party Pending Application.

7.09 Bankruptcy Filings. As promptly as practicable after the execution of this Agreement, Sellers shall seek to obtain the Approval Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining the Approval Order in relation to the Acquisition and the transactions contemplated by this Agreement, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall not, without the prior written consent of Sellers (which consent shall not be unreasonably withheld or delayed), file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder unless Sellers seek to obtain Bankruptcy



Court approval of an Alternative Transaction, *provided, however*, that Purchaser shall have the right, as a party in interest, to object to the allowance of any Rejection Claims (as defined in Schedule 3.07). In the event the entry of the Approval Order shall be appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

7.10 Alternative Transaction. Purchaser acknowledges and agrees that until the earlier of the entry by the Bankruptcy Court of the Approval Order or the termination of this Agreement in accordance with its terms, Sellers and their respective Affiliates and Representatives shall be permitted to solicit inquiries, proposals, offers or bids from, and may negotiate with, any Person other than Purchaser in relation to the direct or indirect sale, transfer or other disposition, in one or more transactions, of the Acquired Assets or Business and may take any other affirmative action (including entering into any agreement or letter-of-intent with respect thereto) to cause, promote or assist the purchase of the Acquired Assets or Business by a third party (an "Alternative Transaction"), *provided, however*, that Sellers and their respective Affiliates may only enter into, and seek Bankruptcy Court approval of, any definitive agreement with respect thereto if such Alternative Transaction is a Superior Transaction. Without limiting the generality of the foregoing, Sellers and their respective Affiliates and Representatives shall be permitted to supply information relating to any Seller, the Acquired Assets or the Business to prospective purchasers that have executed a confidentiality agreement with WorldCom, any other Seller or any of their respective Affiliates. Neither WorldCom, any other Seller or any of their respective Affiliates shall have any liability to Purchaser, either under or relating to this Agreement or any Law, by virtue of entering into or seeking Bankruptcy Court approval of such a definitive agreement for an Alternative Transaction pursuant to this Section 7.10.

7.11 Employee Matters. Sellers acknowledge that Purchaser will not be offering employment to any employee of any Sellers and that Purchaser shall not have any liability or obligation in relation to such employees.

7.12 Access to Business Records. For a period of seven (7) years after the Closing Date, Purchaser shall retain all Business Records to be transferred hereunder (including Tax returns) and shall afford Sellers' and their respective Representatives reasonable access to and the ability to copy such Business Records during normal business hours. For a period of seven (7) years after the Closing Date, Sellers shall retain all of their respective records, files, and documents (including Tax returns) relating to the Acquired Assets, or the acquisition, ownership or operation of any Acquired Asset which are not otherwise transferred to Purchaser pursuant to this Agreement and shall afford Purchaser and its Representatives reasonable access to and the ability to copy such records, files and documents during normal business hours. Upon written notice to the other parties, a party may extend the applicable retention period benefiting such party for a reasonable period of time in connection with a then-pending audit.

7.13 Maintenance Agreements

(a) Within thirty (30) days after the date of this Agreement, Sellers shall provide to Purchaser a list of all agreements that Sellers are party to or bound by under which Sellers currently receive maintenance, repair, servicing or similar services from third parties in relation to those transmitters, generators, HVAC systems, Transmission Towers and related

equipment which form part of the Acquired Assets (collectively, the "Maintenance Agreements") Such list shall include the date of the agreement, name and contact information of the counterparty, and a brief description of the maintenance services provided by such counterparty Sellers shall use commercially reasonable efforts to provide to Purchaser, within thirty (30) days after the date hereof, true and complete copies of such Maintenance Agreements to the extent available, *provided, however*, that Sellers shall not be required to provide copies of such agreements to Purchaser if such disclosure would cause any Seller or any of their respective Affiliates to breach a confidentiality obligation to which it is bound and Purchaser is unable to obtain a waiver of such confidentiality obligation

(b) For the avoidance of doubt, the Maintenance Agreements set forth on the list provided by Sellers to Purchaser pursuant to Section 7.13(a) shall not comprise Acquired Assets However, prior to the Exclusion Date for any other Assigned Contracts (as determined in accordance with Section 2.07(c)), Purchaser may, in its sole discretion and at its option, by written notice to Sellers, elect to include any one or more of the Maintenance Agreements in the Acquired Assets without increasing the Purchase Price If Purchaser exercises its right to include a Maintenance Agreement in the Acquired Assets pursuant to this Section 7.13(b), then (i) such Maintenance Agreement shall thereafter cease to be an Excluded Asset and shall become an Acquired Asset for all purposes under this Agreement (including for purposes of the definition of Assigned Contracts), and (ii) all Liabilities relating to or arising under such Maintenance Agreement that would otherwise constitute an Excluded Liability shall become an Assumed Liability Purchaser acknowledges and agrees that Sellers have not made and will not make any representations or warranties in relation to any of the Maintenance Agreements and, accordingly, (x) any Assumed Liabilities that Purchaser will assume by virtue of exercising its rights under this Section 7.13(b) shall be disregarded for purposes of determining whether or not the conditions set forth in Sections 8.02(a) and 8.02(d) have been satisfied, and (y) Purchaser shall not be entitled to any claim for indemnification pursuant to Section 10.01(a)(i) in relation to such Maintenance Agreements

7.14 Further Assurances From time to time, as and when requested by any party, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions (subject to Section 7.05), as such other party may reasonably deem necessary or desirable to consummate the Acquisition and the transactions contemplated hereby, including, in the case of Sellers, providing the Business Records and executing and delivering to Purchaser such assignments, deeds, bills of sale, consents and other instruments, in each case as Purchaser or its counsel may reasonably request as necessary or desirable for such purpose.

#### 7.15 Tax Matters.

(a) Purchaser and Sellers shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets as is reasonably necessary for filing of all Tax returns, including any claim for exemption or exclusion from the application or imposition of any Taxes or making of any election related to Taxes, the payment of Taxes, the preparation for any audit by any Taxing Authority and the prosecution or defense of any Proceeding relating to any Tax return.

(b) All Transfer Taxes arising out of the transfer of the Acquired Assets and any Transfer Taxes required to effect any recording or filing with respect thereto shall be borne 50% by Purchaser and 50% by Sellers. The Transfer Taxes shall be calculated assuming that no exemption from Transfer Taxes is available, unless otherwise indicated in the Approval Order or, at Closing, Purchaser shall provide an appropriate resale exemption certificate or other evidence acceptable to Sellers of exemption from such Transfer Taxes. Sellers and Purchaser shall cooperate to timely determine the amount of any Transfer Taxes and timely prepare and file any returns or other filings relating to such Transfer Taxes, in form and substance satisfactory to each party, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes. Sellers shall pay such Transfer Taxes and shall file all necessary documentation and returns with respect to such Transfer Taxes when due, and shall promptly following the filing thereof furnish a copy of such return or other filing and a copy of a receipt showing payment of any such Transfer Tax to Purchaser, and Purchaser shall reimburse Sellers promptly for one-half of such Transfer Taxes paid after giving effect to the Approval Order.

(c) Except as provided in Section 7.15(b), all real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Acquired Assets for a Tax period that includes (but does not end on) the Closing Date, whether imposed or assessed before or after the Closing Date, shall be apportioned between Sellers, on the one hand, and Purchaser, on the other, as of the Closing Date, based on the number of days in any such period falling prior to and including the Closing Date, on the one hand, and after the Closing Date, on the other hand. Sellers shall be responsible for the portion of such apportioned Taxes attributable to the period up to and including the Closing Date and Purchaser shall be responsible for the portion of such apportioned Taxes attributable to the period after the Closing Date. Accordingly, if any Taxes required to be apportioned hereunder are paid by Purchaser, on the one hand, or Sellers, on the other hand, then Sellers or Purchaser, as the case may be, shall promptly reimburse the paying party for the non-paying party's share of such apportioned Taxes. Similarly, if Purchaser, on the one hand, or Sellers, on the other hand, receive a refund of any Taxes that are required to be apportioned hereunder, then the recipient of such refund shall promptly pay to the other party such other party's share of such refund as determined in accordance with the foregoing apportionment provisions (assuming that Purchaser and Sellers contributed to the applicable Tax payment in accordance with the first two sentences of this Section 7.15(c)).

#### 7.16 Confidentiality

(a) For a period of two (2) years after the Closing Date, Sellers shall, and shall cause their Affiliates and Representatives to, preserve and protect the confidentiality of the terms and conditions of the Acquired Spectrum Leases, Real Property Leases, Assigned Contracts, Business Records and similar confidential information predominantly and directly related to the Acquired Assets (collectively, the "MMDS Business Information"), and not to disclose the MMDS Business Information to any third party except as required by applicable Law or, if Sellers deem necessary or advisable, in connection with any Proceeding involving Sellers, *provided, however*, that Sellers shall use good faith efforts to provide Purchaser with written notice of such circumstance prior to disclosure of any such information so that Purchaser may seek a protective order or other appropriate remedy. For the avoidance of doubt, the foregoing

obligations shall not apply to (i) information which is or becomes generally known to the industry or in the public domain other than as a result of Sellers' or their Affiliates' or Representatives' disclosure of such information in violation of the provisions of this Agreement or (ii) information that is furnished or becomes available to Sellers from a third party on a non-confidential basis after the date hereof who is not, to the Knowledge of Sellers, prohibited from disclosing such information by a legal, contractual or fiduciary obligation.

(b) The parties agree that (i) any information furnished to or obtained by Purchaser or any of its Representatives during the period from the date of this Agreement to the Closing Date as a result of Sellers providing access as contemplated by Section 7.02 and (ii) the terms and conditions of this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby (the "Confidential Information"), shall in each case be treated by Purchaser as confidential on the same terms and conditions as those set forth in the letter agreement between Purchaser and WorldCom dated as of November 13, 2002, as it may be amended from time to time (the "Confidentiality Agreement"), *provided, however*, that the Confidentiality Agreement shall not apply to restrict disclosure or use of any Confidential Information (i) to the extent reasonably necessary in connection with any application to the FCC contemplated hereby or otherwise reasonably necessary in connection with the transfer of Acquired Assets contemplated hereby or Purchaser's performance of this Agreement prior to the Closing, (ii) if Purchaser deems necessary or advisable, in connection with any Proceeding involving Purchaser; *provided, however*, that Purchaser shall use good faith efforts to provide Sellers with written notice of such circumstance prior to disclosure of any such information so that Sellers may seek a protective order or other appropriate remedy, or (iii) after the Closing. Notwithstanding the foregoing, the parties hereto acknowledge that in connection with seeking entry of the Approval Order and implementation thereof, this Agreement (together with any Exhibits and certain Schedules attached hereto) will be filed with the Bankruptcy Court and made publicly available, and prior to the entry of such Approval Order, disclosures relating to the transactions contemplated by this Agreement and the Ancillary Agreements will be made to the *official committee of unsecured creditors of WorldCom, Inc. et al* appointed in connection with the Bankruptcy Cases and to its Representatives, and the parties agree that such filing and disclosures will not violate any confidentiality obligations owing to any party, whether pursuant to the Confidentiality Agreement, this Agreement or otherwise. This Section 7.16 shall not in any way limit the disclosure of information by any Seller in connection with the administration of the Bankruptcy Cases. Furthermore, notwithstanding anything to the contrary in this Agreement, Purchaser acknowledges and agrees that prior to entry of the Approval Order or the termination of this Agreement in accordance with its terms, Sellers will continue to market and solicit offers for the Acquired Assets and the Business and may issue press releases, place advertisements or make other releases or disclosures in connection therewith, and nothing in this Agreement will, or is intended to, in any way restrict such actions or efforts.

(c) Notwithstanding anything to the contrary in this Agreement or in any other agreement to which the parties hereto are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated by this Agreement (the "Transactions"), shall not apply to the tax structure or tax treatment of the Transactions, and each party hereto (and any employee, representative, or agent

of any party hereto) may disclose to any and all persons, without limitation of any kind, the tax structure and tax treatment of the Transactions. The preceding sentence is intended to cause the Transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 16011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under the Code and shall be limited to and construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to the tax structure of the Transactions or any tax matter or tax idea related to the Transactions.

7.17 Press Releases No public filing, release or announcement concerning this Agreement or the transactions contemplated hereby shall be issued by any party or its Affiliates without the prior written consent of the other parties (which consent shall not be unreasonably withheld, delayed or conditioned), unless such disclosure is required by an order of the Bankruptcy Court or any other Judgment, by Law or by obligations pursuant to an agreement with any national securities exchange (based on the advice of legal counsel expert in securities law), *provided, however*, that the party intending to make such release shall use commercially reasonable efforts consistent with such order, Judgment, Law or obligation to give the other parties prior notice and to consult with the other parties with respect to the text thereof.

7.18 Expenses Except as set forth in Sections 3.05, 7.03, 7.04, 7.05 and 11.07 all costs and expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto or its Affiliates) incurred by a party or on its behalf in connection with the preparation, negotiation, execution and delivery, and performance of this Agreement, the Ancillary Agreements, and the transactions contemplated hereby and thereby (including costs incurred in connection with obtaining entry of the Approval Order and the Bidding Procedures Order) shall be paid by the party incurring such expense. The fees and expenses of the Escrow Agent shall be borne by Purchaser as provided in the Escrow Agreement.

7.19 Use of Names Following the Closing Date, Purchaser shall not use the name "WorldCom", "WorldCom Broadband Solutions", "Wireless One", "CS Wireless" or any variation thereof, or any trademarks, trade names, logo or symbols related thereto, or any trademark, trade name, logo or symbol confusingly similar to any of the foregoing, in relation to any goods or services or in the conduct of its business.

7.20 Retained Spectrum Leases.

(a) On or before the first anniversary of the Closing Date, Sellers shall (i) reject in bankruptcy, terminate or transfer to an entity that is not an Affiliate of any Seller, all MMDS and ITFS spectrum leases to which any Seller is a party and which leases are not part of the Acquired Assets (the "Retained Spectrum Leases") and (ii) terminate all operations of the Business; *provided, however*, that Sellers shall not reject or cause to be rejected any Real Property Lease, Acquired Spectrum Lease or any Assigned Contract in any bankruptcy proceeding unless (y) such asset has been removed from the Acquired Assets as permitted by Section 2.07 hereof or (z) *unless this Agreement is terminated in accordance with its terms prior to such rejection*

(b) If any Seller elects to transfer any Retained Spectrum Lease to a non-Affiliate, Sellers shall send written notice to Purchaser of the proposed transfer. Such notice shall enclose a copy of the final forms of all the proposed transaction documents relating to the transfer. At Purchaser's election, within thirty (30) days from its receipt of Sellers' notice, Purchaser may notify Sellers in writing that Purchaser will purchase the Retained Spectrum Lease on the same terms and conditions under which the Seller's proposed transferee would have purchased such Retained Spectrum Lease; *provided, however*, that if the proposed transferee would be required to purchase the Retained Spectrum Lease during the thirty (30)-day period, then Purchaser will have the same period of time to purchase the Retained Spectrum Lease that the proposed transferee would have had, such period beginning on the date that Sellers' notice is received by Purchaser. If Purchaser fails to send written notice to Sellers within the aforementioned period, then Purchaser's right to purchase such Retained Spectrum Lease will expire and the applicable Seller may then sell the Retained Spectrum Lease to the proposed transferee on the terms contained in the proposed transaction documents. If Sellers change any material terms of the transaction documents or any material terms of the proposed transfer, then Sellers shall notify Purchaser of the revised terms and Purchaser will have a new thirty (30)-day right of first refusal using the same procedures referred to in the preceding provisions of this Section 7.20(b).

7.21 Non-competition During the period from and including the Closing Date until the second anniversary of the Closing Date, Sellers shall not (i) acquire licenses for MMDS or ITFS spectrum or enter into leases for MMDS or ITFS spectrum, *provided, however*, that this Section 7.21 shall not prohibit any Seller from acquiring such licenses or leases if such licenses or leases represent an immaterial portion of the assets or operations of any person or business acquired by any Seller after the Closing Date and (ii) except as expressly permitted pursuant to Section 7.20(a) or clause (i) of this Section 7.21, operate any business using MMDS or ITFS spectrum in the United States of America.

7.22 Renewal of Certain Short Term Leases. During the period from the date of entry of the Approval Order to the Closing Date, upon Purchaser's written request, Sellers shall use their commercially reasonable efforts to obtain the amendment or renewal of each of the Acquired Spectrum Leases and Real Property Leases referenced in Schedule 7.22 (each, a "Short Term Lease") to provide for (i) in the case of an Acquired Spectrum Lease, a one-year extension of such Short Term Lease and (ii) in the case of a Real Property Lease, a month to month extension of such Short Term Lease, in each case on substantially the same terms and conditions as the existing Short Term Lease and which are otherwise reasonably acceptable to Purchaser. Notwithstanding the foregoing, Sellers shall have no obligation to seek such an amendment or renewal until a time that is 60 days prior to the scheduled expiration date of the applicable Short Term Lease unless Purchaser notifies Sellers that the terms of the Short Term Lease require a longer time period for seeking renewal. Upon termination of this Agreement for any reason (other than termination by Purchaser pursuant to Section 9.01(f)), Purchaser shall pay Sellers a lump sum cash amount equal to the sum of (i) the rent or lease payments payable under such leases in respect of the entire period of such extension and (ii) all reasonable out-of-pocket expenses incurred by Sellers in connection with obtaining the amendment or renewal of such Short Term Lease.

7.23 Apportionment of Prepaid Expenses and Accounts Payable.

(a) Subject to Section 7.23(c), on the Closing Date, those items of expenses and accounts payable specifically referred to in Section 7.23(b) (other than Cure Amounts) in relation to the Acquired Assets that are paid or payable before and after the Closing Date on an annual, quarterly, monthly or other regular periodic basis ("Prorated Expense Items") shall be prorated as of the Closing Date and apportioned, such that (i) Purchaser shall receive the economic benefit or burden, as applicable, of all such items after the Closing Date, and (ii) Sellers shall receive the economic benefit or burden, as applicable, of all such items for the period prior to, and including, the Closing Date. Accordingly, after the Closing Date, (x) if Purchaser should receive any bills or accounts or any reimbursement for prepaid expenses in relation to Prorated Expense Items that are attributable in whole to the period prior to, and including, the Closing Date, then Purchaser shall promptly forward the same to Sellers (for payment, in the case of any such bills or accounts), (y) if Sellers should receive any bills or accounts or any reimbursement for prepaid expenses in relation to the Prorated Expense Items that are attributable in whole to the period after the Closing Date, then Sellers shall promptly forward the same to Purchaser (for payment, in the case of any such bills or accounts) and (z) if Purchaser or Sellers should receive any bills or accounts or any reimbursements for prepaid expenses in relation to the Prorated Expense Items that are attributable in part to the period prior to, and including, the Closing Date, and in part to the period after the Closing Date, the amount thereof shall be apportioned between Sellers, on the one hand, and Purchaser, on the other hand, as of the Closing Date, based on the number of days in such period falling prior to and including the Closing Date, on the one hand, and after the Closing Date, on the other hand. In the case of bills or accounts referred to in clause (z), the party receiving the same shall pay such bill or account and promptly forward a copy of the same to the other party, which shall reimburse the paying party for the amount of the bill or account for which the other party is responsible in accordance with this Section 7.23(a). In the case of prepaid expense reimbursements referred to in clause (z), the party receiving any such reimbursement shall promptly remit to the non-receiving party the portion thereof to which the other party is entitled in accordance with this Section 7.23(a). Similarly, all rent receivable under the Tower Subleases shall be apportioned such that Sellers shall receive the rent attributable to the period prior to, and including, the Closing Date and Purchaser shall receive the rent attributable to the period after the Closing Date. This Section 7.23 does not apply to any security deposits, which are instead addressed in Section 7.24.

(b) The following expense items shall be prorated in the manner contemplated by Section 7.23(a): (i) regular periodic rent or lease payments (including prepaid rent and rent payable in arrears) payable under the Acquired Spectrum Leases and Real Property Leases, (ii) annual FCC regulatory fees in relation to the Company FCC Licenses, (iii) certain Taxes as provided in Section 7.15(c), and (iv) utilities expenses pertaining to the Real Property Leases. For the avoidance of doubt, it is acknowledged that any "one-time" prepaid rent or lease payments shall not constitute Prorated Expense Items.

(c) Not less than ten (10) Business Days prior to the Closing Date, the parties will jointly prepare a preliminary closing statement containing their good faith calculation of the prorations provided for in Section 7.23(a). If final bills or accounts in relation to any Prorated

Expense Items or rent receivable referred to in Section 7.23(a) are not available or have not been issued prior to that date for any Prorated Expense Item, or rent receivable that is required to be prorated as contemplated in Section 7.23(a), then the parties shall estimate the amount of each such item in good faith, and such estimate shall be reflected in the preliminary closing statement. The amount payable by Purchaser at the Closing will be increased or decreased to reflect the net amount owing between the parties as shown on such preliminary closing statement, using such estimates where necessary. Final adjustment between the parties as to any estimated item used in the preparation of the preliminary closing statement shall be made as soon as reasonably practicable after the Closing after such item becomes final. Payments in connection with such final adjustment or otherwise necessary to reconcile amounts between the parties in accordance with Section 7.23(a) shall be due within thirty (30) days of written notice from the party entitled to payment to the other party.

(d) Purchaser and Sellers shall refer any and all disputes concerning the preliminary closing statement referred to in Section 7.23(c) or the allocations and prorations provided for in Section 7.23(a) and the parties' respective responsibilities therefor to a mutually acceptable "Big Four" accounting firm (the "Independent Accounting Firm") which shall be instructed to resolve any such dispute within 30 days after the referral of such dispute to such firm or as soon as reasonably practicable thereafter. Purchaser and Sellers will make available to the Independent Accounting Firm, at reasonable times and upon reasonable notice at any time during the pendency of any such dispute under this Section 7.23, any relevant information used in preparing such preliminary closing statement or otherwise relating to the matters covered by this Section 7.23. Purchaser and Sellers shall have the right to meet jointly with the Independent Accounting Firm during this period to present their respective positions. The Independent Accounting Firm shall act as experts and not as arbitrators, and shall make its determination only on evidence brought to it by the parties, and shall not conduct an audit. Any determination of a disputed matter under this Section 7.23 by the Independent Accounting Firm shall be set forth in writing and will be conclusive and binding upon the parties.

7.24 Security Deposits. Any refundable security deposits made by any of Sellers or their respective Affiliates and held by third parties as of the Closing in relation to the Ground Leases and Tower Site Leases shall either be (i) withdrawn by Sellers or their respective Affiliates from such third party and Purchaser shall provide such third party with a replacement security deposit satisfactory to such third party if required by such third party, or (ii) transferred or credited to Purchaser on the books and records of such third party as of the Closing Date and Purchaser shall pay Sellers a cash amount equal to the full face value of such security deposit.

7.25 Additional Payments by Purchaser following FCC Approval. During the period beginning on the 41st day after the date of the last FCC approval resulting in the satisfaction of the condition in Section 8.02(g) (*provided, however, that solely for the purposes of this Section 7.25, such approval need not have been obtained by Final Order*) and ending on the earlier of (i) the date of termination of this Agreement in accordance with its terms or (ii) the Closing Date, Purchaser shall pay to Sellers an amount equal to fifty percent (50%) of the amount of Prorated Expense Items paid or payable for such period, such amounts to be prorated for any partial periods. Sellers shall invoice Purchaser for Purchaser's share of such expenses.



within five (5) Business Days after the end of each calendar month and Purchaser shall pay such invoiced amounts within five (5) Business Days of receipt of the invoice.

7.26 Common Equipment If and to the extent that any Seller (i) shares use of certain equipment (other than Third Party Dedicated Equipment) which is currently owned by a Seller (and used in connection with the transmission of signals to or from a Tower Site) with an Affected Lessor (as defined below) that is not an Affiliate of any Seller (such equipment, collectively, the "Common Equipment") and (ii) has granted such Affected Lessor rights to purchase or otherwise acquire such Common Equipment pursuant to the terms of the applicable spectrum lease, then the rights and obligations of Purchaser and Sellers with respect to such Common Equipment shall be governed as set forth in this Section 7.26. As used in this Section 7.26, "Affected Lessor" means any third party holder of an ITFS FCC License that leases spectrum under such ITFS FCC License to any Seller.

(a) Title Claims If prior to the date of entry of the Approval Order an Affected Lessor files an objection, response, reply or other pleading in the Bankruptcy Court which challenges a Seller's title to the Common Equipment or the ability of such Seller to transfer good title to such Common Equipment to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order), then Sellers shall promptly seek a Bankruptcy Court ruling establishing such good title and the ability to transfer such good title to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order).

(b) Favorable Title Ruling If the Bankruptcy Court rules that a Seller has good title to the Common Equipment and that Seller is entitled to transfer good title to such Common Equipment to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order), then (i) such Seller shall transfer such Common Equipment to Purchaser at the Closing as provided in this Agreement, and (ii) in the event that Sellers reject an Affected Lessor's spectrum lease, Purchaser will provide such Affected Lessor with continued access to that Common Equipment, *provided, however*, that (x) Purchaser is in no way assuming any of the obligations under the rejected spectrum lease (or under any other spectrum lease which is not included in the final Acquired Assets), (y) although Purchaser will grant such access, Purchaser will not have any obligation to maintain such Common Equipment or any responsibility for the functionality of that Common Equipment, and (z) the duration of such access shall be limited to the term of the rejected spectrum lease (without renewal) as if such lease had not been rejected.

(c) Alternate Performance If (i) the Bankruptcy Court rules that Sellers do not have good title to the Common Equipment or that Sellers are not entitled to transfer good title to the Common Equipment to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order), (ii) the Bankruptcy Court fails to enter an Approval Order pursuant to which Sellers will be able to transfer good title to such Common Equipment to Purchaser free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order), or (iii) the Bankruptcy Court's favorable ruling described in Section 7.26(b) is overruled on appeal or does not become a final order so that Sellers are not entitled to transfer good title to the Common Equipment to Purchaser

free and clear of all Liens (other than those that would be terminated at the Closing pursuant to the Approval Order) then, in lieu of delivering good title to the Common Equipment to Purchaser free and clear of all Liens, the rights and obligations of Purchaser and Sellers shall instead be governed by the provisions of Schedule 7.26

(d) Miscellaneous Sellers acknowledge and agree that no Seller is authorized to or will purport to act on behalf of Purchaser in connection with any Affected Lessor, and that Purchaser is not obligated to and will not assume any Liability or obligation under any rejected spectrum lease (including any obligation of a Seller to sell or make available access to or use of any Common Equipment or other Acquired Asset to any Affected Lessor pursuant to the terms of any rejected spectrum lease), all of which constitute Excluded Liabilities.

7.27 Third Party Licenses If any of the Third Party Licenses are acquired by any Seller or any of its Affiliates after the Closing Date, then (i) such Seller and Purchaser shall (or Sellers shall cause such Affiliate to) as soon as practicable file an application for assignment of such Third Party License to Purchaser and (ii) subject to the receipt of any necessary Consent of any Governmental Authority required to be obtained by Sellers and/or Purchaser in connection therewith, including the approval of the FCC by Final Order, (x) Sellers shall (or shall cause their Affiliates to) sell, assign, transfer, convey and deliver to Purchaser such Third Party Licenses and (y) in consideration therefor, Purchaser shall pay to Sellers the applicable amounts for such Third Party Licenses set forth on Schedule 4.03(a)(ii).

7.28 Assignment of FCC Licenses after the Closing

(a) Remaining Licenses. If any of the Company FCC Licenses are not assigned to Purchaser at the Closing because the approval of the FCC with respect to the FCC Assignment Applications related thereto shall not have been obtained by Final Order (unless waived by Purchaser) (the "Remaining Licenses"), then Sellers and Purchaser shall, after the Closing, continue to seek to obtain the approval of the FCC with respect to the assignment of such Remaining Licenses. If the approval of the FCC to the assignment of any of the Remaining Licenses is obtained by Final Order (unless waived by Purchaser) after the Closing, then, on the last day of each calendar quarter (or earlier at the discretion of Purchaser) through and including December 31, 2004 (each such date, a "Supplemental Closing Date"), (i) Sellers shall sell, assign, transfer, convey and deliver to Purchaser those Remaining Licenses for which the FCC's consent to assignment has been obtained during the period from the Closing Date or previous Supplemental Closing Date, as applicable, and (ii) in consideration therefor, Purchaser shall pay to Sellers the applicable amounts set forth on Schedule 3.03 for those Remaining Licenses that are Principal Licenses.

(b) No Separation of Remaining Licenses and License Related Assets. Notwithstanding anything to the contrary in this Agreement, if any Real Property Leases (i) are used in relation to any of the Remaining Licenses that are not assigned to Purchaser at the Closing and (ii) are not used in relation to any Company FCC License or Acquired Spectrum Lease that is assigned to Purchaser at the Closing, then such Real Property Lease together with any Tower Assets and, if applicable, any Tower Subleases of space upon the Transmission Towers located thereon (collectively, the "License Related Assets"), shall not be transferred with

the other Acquired Assets transferred at the Closing, and shall instead be assigned, transferred and delivered to Purchaser together with their related Remaining License (if and when such Remaining License is transferred), such that the aforementioned assets shall not be separated from each other or their related Remaining License. In furtherance of the foregoing, no Assumed Liability arising under or related to any of the License Related Assets which are not transferred at the Closing pursuant to this Section 7.28(b) shall be assumed by Purchaser unless and until the related Remaining License is transferred and assigned to Purchaser as contemplated by this Section 7.28. Notwithstanding the foregoing, the provisions of this Section 7.28(b) shall not apply to any License Related Assets that are related to the Company FCC Licenses set forth on Schedule 5.11(b). Accordingly, if Purchaser does not exercise its right to remove such License Related Assets from the Acquired Assets pursuant to its rights under Section 2.07(a), then such assets will be transferred to Purchaser at the Closing, irrespective of whether the Company FCC Licenses set forth on Schedule 5.11(b) are or are not transferred to Purchaser at the Closing. For the avoidance of doubt, the retention by Sellers of any License Related Assets pursuant to this Section 7.28(b) shall not affect the Purchase Price.

(c) Effect of Supplemental Closings on the Parties' Obligations. From and after the Closing, this Agreement and all representations, warranties, covenants and agreements (including indemnities) contained herein shall remain in effect as to any Remaining Licenses and any License Related Assets, such that the one (1) year survival period with respect to those representations and warranties of Sellers referred to in Section 11.02, shall commence from and after the applicable Supplemental Closing Date with respect to those Remaining Licenses and License Related Assets that are assigned to Purchaser on such Supplemental Closing Date.

(d) Final Date for the Assignment of Assets. For the avoidance of doubt, Sellers shall have no obligation to assign, transfer, convey or deliver any of the Remaining Licenses or their License Related Assets, and Purchaser shall have no obligation to purchase or accept any of the Remaining Licenses or their License Related Assets, in either case, after December 31, 2004.

7.29 Third Party Dedicated Equipment. Solely with respect to those items of Third Party Dedicated Equipment which are not set forth on Schedule 5.19 and therefore do not comprise Acquired Assets, Sellers hereby undertake and agree as follows:

(a) Sellers will not sell, transfer or otherwise dispose of such equipment to any third party without obtaining a prior written agreement and acknowledgment from such third party addressed to Agent and Purchaser to the effect that: (i) all rights, titles and interests of such third party are subject and subordinate to the rights of Purchaser, and any landlord, lessor or other Person owning or in possession of a site on which such equipment is located (a "Site Holder"), not to be disturbed in the use or possession of such site and any real or personal property thereon (including in the case of Purchaser, any Acquired Assets located thereon), (ii) any disconnection or removal of such equipment by such third party will only be effected in a manner that does not damage or adversely affect the operation or functionality of such Acquired Assets or the real or personal property located on such site, (iii) such third party will obtain the prior consent of Purchaser (not to be unreasonably withheld or delayed) and any other applicable Site Holder prior to accessing such site in connection with any disconnection or removal of

equipment activities, (iv) prior to the Closing, such third party may only disconnect or remove such equipment under the supervision of Sellers' designated technical specialists, (v) after the Closing, such third party may only disconnect or remove such equipment under the supervision of Purchaser's designated technical specialists, (vi) such third party shall be solely responsible for any damages or out-of-pocket costs incurred by Sellers, Purchaser or any other Site Holder resulting from any such disconnection or removal, and (vii) Purchaser has not assumed any obligations or liabilities to such third party including any obligation to maintain, repair, insure, or operate any such equipment.

(b) If and to the extent that Sellers do not sell, transfer or otherwise dispose of any such equipment within 6 months after the Closing Date, then Sellers shall execute a bill of sale to assign and transfer the remaining equipment not so disposed of to Purchaser at no cost to Purchaser; *provided, however*, that if prior to such date Sellers have entered into an agreement to sell, transfer or otherwise dispose of any such remaining equipment, Sellers shall transfer the same to Purchaser only if and when such agreement is terminated prior to the consummation of such sale, transfer or other disposition

7.30 Performance. USFCo shall take all necessary steps to ensure that Purchaser takes any and all actions required to be taken by Purchaser pursuant to this Agreement.

7.31 Updating of Certain Schedules. Sellers and Purchaser agree that within ten (10) Business Days after the date of execution of this Agreement, Sellers may submit to Purchaser updated versions of Schedules 5.11(i), 5.12(b), 5.12(c), 5.12(d) and 5.12(e). If Sellers submit such schedules to Purchaser within the time frame permitted, then for all purposes under this Agreement and notwithstanding anything to the contrary in this Agreement, such schedules shall be deemed to have been attached to this Agreement at the time of execution of this Agreement and shall replace and supercede in their entirety any preceding versions of such schedules.

7.32 Copies of Leases and Contracts. If true and complete copies of any of the Real Property Leases, Acquired Spectrum Leases or Assigned Contracts are not currently in the possession of Sellers, then Sellers shall use commercially reasonable efforts to obtain such documents and provide such documents to Purchaser as soon as reasonably practicable after the date hereof.

## ARTICLE VIII CLOSING CONDITIONS

8.01 Conditions to Obligations of Purchaser and Sellers. The respective obligations of Purchaser, on the one hand, and Sellers, on the other hand, to effect the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities shall be subject to the satisfaction (or waiver by Purchaser or Sellers, as applicable) at or prior to the Closing of each of the following conditions:

(a) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other

legal restraint or prohibition (collectively, "Legal Restraints"), shall be in effect or pending which materially delays, restrains, enjoins or otherwise prohibits or seeks to restrain, enjoin or otherwise prohibit the consummation of the Acquisition and the transactions contemplated hereby

(b) The Approval Order. The Bankruptcy Court shall have entered the Approval Order, in form and substance reasonably acceptable to Purchaser, which, among other things, shall have authorized Sellers to convey to Purchaser the Acquired Assets free and clear of all Liens and Liabilities of any Person other than the Assumed Liabilities, and the Bankruptcy Court shall have approved the assumption and the assignment to Purchaser of the Real Property Leases, Acquired Spectrum Leases and the Assigned Contracts, as contemplated hereby. Any stay period applicable to the Approval Order shall have expired or shall have been waived by the Bankruptcy Court.

(c) HSR Act. The waiting period applicable to the Acquisition under the HSR Act, if any, shall have expired or been earlier terminated.

(d) Consents and Approvals. Any consents, waivers, authorizations and approvals of third parties (including any Governmental Authority) necessary in connection with the Acquisition and the other transactions contemplated by this Agreement, unless waived by Purchaser, shall have been obtained by Sellers and delivered to Purchaser except such consents, waivers, authorizations and approvals the failure of which to obtain would not have a Sellers Material Adverse Effect and such consents and approvals which are not required due to the entry by the Bankruptcy Court of the Approval Order. This Section 8.01(d) does not apply to any consent or approval required to be obtained from the FCC in relation to any of the FCC Assignment Applications, which are instead governed by the provisions of Section 8.02(g) and Section 8.04.

8.02 Additional Conditions to Obligations of Purchaser. The obligation of Purchaser to purchase and pay for the Acquired Assets and to assume the Assumed Liabilities shall be subject to the satisfaction (or waiver by Purchaser) at or prior to the Closing of each of the following conditions:

(a) Accuracy of Representations and Warranties. The representations and warranties of Sellers set forth in this Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Sellers that are not so qualified shall be true and correct in all material respects, (i) as of the date hereof and (ii) on and as of the Closing Date, in the latter case with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except that (A) representations and warranties that are made as of a specific date need be true and correct only as of such date, and (B) any failure of the representations and warranties of Sellers (other than Title Warranties) to be true and correct shall be disregarded unless, individually or in the aggregate, such failures have had, or could reasonably be expected to have, a Sellers Material Adverse Effect.

(b) Performance of Obligations. Sellers shall have performed and complied in all material respects with all agreements, covenants and obligations required by this Agreement to be performed or complied with by Sellers at or prior to the Closing.

(c) Officer's Certificate Purchaser shall have received a certificate, dated the Closing Date, signed by an appropriate senior officer of WorldCom (but without personal liability thereto) to the effect that the conditions specified in Sections 8.02(a), 8.02(b) and 8.02(d) have been satisfied, and that Sellers have performed and complied with their obligations in Section 2.06

(d) No Sellers Material Adverse Effect. From the date of this Agreement to the Closing Date, there shall not have occurred a Sellers Material Adverse Effect, *provided, however,* that in addition to other possible causes, a Sellers Material Adverse Effect shall be deemed to have occurred if the Assumed Liabilities, taken as a whole, are at least \$1,440,000 more than they would have been had the representations and warranties of Sellers set forth in this Agreement been true and correct

(e) The Approval Order The Approval Order shall have become final and non-appealable.

(f) FCC Order Regarding BTA Build-Out Requirements The FCC shall have released an order suspending the BTA build-out requirements of Section 21.930 of the FCC Rules during the pendency of the rulemaking proceeding regarding amendment of the MMDS/ITFS rules, and that portion of such order relating to the suspension of the BTA build-out requirement shall have become a Final Order

(g) FCC Approval. The FCC's approval of the FCC Assignment Applications shall have been obtained on the terms set forth on Schedule 8.02(g)

8.03 Additional Conditions to Obligations of Sellers The obligation of Sellers to sell, assign, convey and deliver the Acquired Assets and to enter into the other transactions contemplated hereby shall be subject to the satisfaction (or waiver by Sellers) at or prior to the Closing of each of the following conditions

(a) Accuracy of Representations and Warranties. The representations and warranties of Purchaser set forth in this Agreement that are qualified as to materiality shall be true and correct, and the representations and warranties of Purchaser that are not so qualified shall be true and correct in all material respects, (i) as of the date hereof and (ii) on and as of the Closing Date, in the latter case with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except that representations and warranties that are made as of a specific date need be true and correct only as of such date

(b) Performance of Obligations. Purchaser shall have performed and complied in all material respects with all agreements, covenants and obligations required by this Agreement to be performed or complied with by Purchaser at or prior to the Closing.

(c) Officer's Certificate Sellers shall have received a certificate, dated the Closing Date, signed by an appropriate senior officer of Purchaser (but without personal liability thereto) to the effect that the conditions specified in Sections 8 03(a) and 8 03(b) have been satisfied

8 04 Special Condition in Relation to FCC Licenses Notwithstanding anything to the contrary in this Agreement, Sellers shall have no obligation to sell, assign, transfer, convey or deliver to Purchaser any FCC License, and Purchaser shall have no obligation to purchase from Sellers any FCC License, in each case whether at the Closing or otherwise, unless and until (i) in the case of Sellers, the FCC's approval of the FCC Assignment Application related to the applicable FCC License shall have been obtained, and (ii) in the case of Purchaser, the FCC's approval of the FCC Assignment Application related to the applicable FCC License shall have been obtained by Final Order (unless waived by Purchaser)

#### ARTICLE IX TERMINATION

9 01 Termination This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

- (a) by mutual written consent of Purchaser and Sellers;
- (b) by Purchaser, if the Approval Order shall not have been entered and become final and non-appealable on or before August 7, 2003,
- (c) by Purchaser or Sellers, if any Legal Restraint permanently restraining, enjoining or otherwise prohibiting the consummation of the Acquisition shall have become final and non-appealable, *provided, however*, that the party seeking to terminate this Agreement pursuant to this Section 9 01(c), shall have used commercially reasonable efforts to prevent the entry of and to remove such order,
- (d) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Section 8 01 or 8.02 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser,
- (e) by Sellers, if any condition to the obligations of Sellers set forth in Section 8 01 or 8 03 shall have become incapable of fulfillment other than as a result of a breach by any Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers,
- (f) by Purchaser, if there shall be a breach by Sellers of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 8 02 and which breach cannot be cured or has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by Purchaser to Sellers of such breach and (ii) the Termination Date;

(g) by Sellers, if there shall be a breach by Purchaser of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 8.03 and which breach cannot be cured or has not been cured by the earlier of (i) 20 Business Days after the giving of written notice by Sellers to Purchaser of such breach and (ii) the Termination Date;

(h) by Purchaser or Sellers, if the Closing shall not have occurred by the close of business on December 31, 2003, such date being referred to hereinafter as the "Termination Date", *provided, however*, that if the Closing shall not have occurred solely due to the failure of the FCC to approve the FCC Assignment Applications contemplated hereby by Final Order (unless waived by Purchaser) on the terms set forth on Schedule 8.02(g), then no party may terminate this Agreement under this Section 9.01(h) prior to June 30, 2004, *provided, further*, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or Sellers, then the breaching party may not terminate this Agreement pursuant to this Sections 9.01(h),

(i) by Purchaser or Sellers, if, at any time prior to the entry of the Approval Order, the Bankruptcy Court shall enter an order approving an Alternative Transaction;

(j) by Sellers, if at any time prior to the entry of the Approval Order, Sellers shall file a motion in the Bankruptcy Court seeking approval of a transaction or series of related transactions (a "WorldCom Sale Transaction") that contemplates the sale, transfer or other disposition of all or a material portion of (i) the Acquired Assets and (ii) substantial assets of businesses of WorldCom and its Subsidiaries (other than the Business), taken as a whole,

(k) by Purchaser, if the Bankruptcy Court shall enter an order approving a WorldCom Sale Transaction,

(l) by Purchaser, upon the terms and conditions set forth in Section 2.08 hereof, or

(m) by Purchaser, if any Seller sells or enters into an agreement to sell any Company FCC License to any person or entity other than Purchaser, Nextel Communications, Inc., or any other Subsidiary of Nextel Communications, Inc., in a transaction or series of related transactions that do not constitute an Alternative Transaction or WorldCom Sale Transaction

9.02 Effect of Termination. A party desiring to terminate this Agreement pursuant to Section 9.01 shall give written notice thereof to each other party specifying the provision hereof pursuant to which the Agreement is terminated. If validly terminated pursuant to Section 9.01, this Agreement shall forthwith become null and void and of no further force and effect, without liability on the part of Purchaser or Sellers or any of their respective Affiliates or Representatives under this Agreement, except for the provisions of Sections 5.21, 6.07, 7.16(b), 7.16(c), 7.17, 7.18, 9.01, Article XI and this Section 9.02 (which shall remain in full force and effect), and subject to (i) Purchaser's right to receive the Escrowed Funds (together with any investment income earned thereon) pursuant to Section 3.02(c) and the provisions of the Escrow



Agreement, and (ii) Sellers' right to receive the Escrowed Funds (together with any investment income earned thereon) pursuant to Section 3.02(b) and the provisions of the Escrow Agreement. For the avoidance of doubt, the obligations of the parties under the Escrow Agreement and, subject to Section 7.16, the Confidentiality Agreement, shall survive any termination of this Agreement.

## ARTICLE X. INDEMNIFICATION

### 10.01 Indemnification by Sellers.

(a) From and after the Closing, subject to Section 10.01(b), Sellers, jointly and severally, shall indemnify Purchaser and its Affiliates and each of their respective Representatives, against, and hold them harmless from, any Losses suffered or incurred (payable promptly upon written request), to the extent arising from or in connection with or otherwise with respect to (i) any breach of any representation or warranty of any Seller contained in this Agreement, (ii) any breach of any covenant or agreement of any Seller contained in this Agreement, and (iii) any Excluded Liabilities (or any third party claim for payment or satisfaction of any Excluded Liabilities). Subject to Section 11.02, and except for those representations and warranties that are made as of a specific date, for purposes of this Section 10.01, the representations and warranties of Sellers set forth in this Agreement that survive the Closing shall be deemed to have been made on and as of the Closing Date.

(b) Sellers shall not be required to indemnify any person, and shall not have any liability under Section 10.01(a)(i) unless the aggregate of all Losses for which Sellers would, but for this Section 10.01(b), be liable exceeds \$1,440,000 (and then only to the extent of such excess); *provided, however*, that the aggregate indemnification obligations of Sellers pursuant to Section 10.01(a)(i) shall not exceed five percent (5%) of the Purchase Price (except in relation to any breach of the Title Warranties and the representations and warranties set forth in Section 5.21, in which case the aggregate indemnification obligations of Sellers pursuant to Section 10.01(a)(i) shall not exceed the Purchase Price). Furthermore, Sellers' aggregate indemnification obligations pursuant to Section 10.01(a)(ii), when considered collectively with Sellers' aggregate indemnification obligations under the immediately preceding sentence, shall not exceed the Purchase Price.

(c) Except as otherwise specifically provided in this Agreement, Purchaser acknowledges that its sole and exclusive remedy for monetary damages after the Closing with respect to any and all claims under this Agreement (other than claims of, or causes of action arising from, actual fraud) shall be pursuant to the indemnification provisions set forth in this Article X.

### 10.02 Indemnification by Purchaser.

(a) From and after the Closing, Purchaser shall indemnify Sellers, their respective Affiliates and each of their respective Representatives, against, and hold them harmless from, any Losses suffered or incurred (payable promptly upon written request), to the

extent arising from or in connection with or otherwise with respect to (i) any breach of any representation or warranty of Purchaser contained in this Agreement, (ii) any breach of any covenant or agreement of Purchaser contained in this Agreement, and (iii) any Assumed Liabilities (or any third party claim for payment or satisfaction of any Assumed Liabilities) Subject to Section 11.02 and except for those representations and warranties that are made as of a specific date, for purposes of this Section 10.02, the representations and warranties of Purchaser set forth in this Agreement that survive the Closing shall be deemed to have been made on and as of the Closing Date.

(b) The aggregate indemnification obligations of Purchaser pursuant to Section 10.02(a)(i) shall not exceed the Purchase Price. Furthermore, Purchaser's aggregate indemnification obligations pursuant to Section 10.02(a)(ii), when considered collectively with Purchaser's aggregate indemnification obligations under the immediately preceding sentence, shall not exceed the Purchase Price

(c) Except as otherwise specifically provided in this Agreement, Sellers acknowledge that their sole and exclusive remedy for monetary damages after the Closing with respect to any and all claims under this Agreement (other than claims of, or causes of action arising from, actual fraud) shall be pursuant to the indemnification provisions set forth in this Article X.

10.03 Calculation of Losses. The amount of any Loss for which indemnification is provided under this Article X shall be (i) net of any amounts actually recovered by the indemnified party under such party's insurance policies with respect to such Loss, (ii) net of any amounts actually recovered from any third person (by contribution, indemnification or otherwise) with respect to such Loss, and (iii) adjusted to take account of any net Tax effect realized by the indemnified party arising from the payment of the amount of the Loss. Any indemnification payment made pursuant to this Article X shall be treated as an adjustment to the Purchase Price for U.S. Federal income tax purposes.

10.04 Termination of Indemnification. The obligations to indemnify and hold harmless any person pursuant to Section 10.01(a)(i) or Section 10.02(a)(i), shall terminate when the applicable representation or warranty terminates pursuant to Section 11.02; *provided, however,* that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the person to be indemnified shall have, before the expiration of the applicable period, previously made a bona fide claim by delivering notice of such claim (stating in reasonable detail the basis of such claim) pursuant to Section 10.05 to the party that is required to provide the indemnification

#### 10.05 Procedures

(a) Third Party Claims. In order for a person (the "Indemnified Party") to be entitled to any indemnification provided for under Section 10.01 or 10.02 in respect of, arising out of or involving a claim made by any third person against the Indemnified Party (a "Third Party Claim"), such Indemnified Party must notify the indemnifying party in writing (and in reasonable detail) of the Third Party Claim within ten (10) Business Days after receipt by such

Indemnified Party of notice of the Third Party Claim. Thereafter, the Indemnified Party shall deliver to the indemnifying party, within five (5) Business Days after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. No delay on the part of the Indemnified Party in notifying the indemnifying party shall relieve the indemnifying party from any liability or obligation under this Agreement unless (and solely to the extent) the indemnifying party is damaged or prejudiced thereby.

(b) Assumption. If a Third Party Claim is made against an Indemnified Party, the indemnifying party shall be entitled to participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the indemnifying party; *provided, however*, that such counsel is not reasonably objected to by the Indemnified Party. Should the indemnifying party so elect to assume the defense of a Third Party Claim, the indemnifying party shall not be liable to the Indemnified Party for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the indemnifying party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel (not reasonably objected to by the indemnifying party), at its own expense, separate from the counsel employed by the indemnifying party, it being understood that the indemnifying party shall control such defense. The indemnifying party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the indemnifying party has not assumed the defense thereof (other than during any period in which the Indemnified Party shall have failed to give notice of the Third Party Claim as provided above). If the indemnifying party chooses to defend or prosecute a Third Party Claim, all the Indemnified Parties shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the indemnifying party's request) the provision to the indemnifying party of records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the indemnifying party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, or offer to settle, compromise or discharge, such Third Party Claim without the indemnifying party's prior written consent (which consent shall not be unreasonably withheld or delayed). If the indemnifying party assumes the defense of a Third Party Claim, the Indemnified Party shall agree to any settlement, compromise or discharge of a Third Party Claim that the indemnifying party may recommend and that by its terms (i) obligates the indemnifying party to pay the full amount of the liability in connection with such Third Party Claim, (ii) releases the Indemnified Party completely in connection with such Third Party Claim and (iii) would not otherwise adversely affect the Indemnified Party in any material respect.

(c) Other Claims. In the event any Indemnified Party should have a claim against any indemnifying party under Section 10.01 or Section 10.02 that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Party, the Indemnified Party shall deliver written notice of such claim with reasonable promptness to the indemnifying party. Subject to Section 10.04 and Section 11.02, the failure by any Indemnified Party to so notify the indemnifying party shall not relieve the indemnifying party

from any liability that it may have to such Indemnified Party under Section 10.01 or Section 10.02, unless (and solely to the extent) that the indemnifying party is damaged or prejudiced thereby

(d) Mitigation Purchaser and Sellers shall cooperate with each other with respect to resolving any claim or liability with respect to which one party is obligated to indemnify the other party hereunder, including by making commercially reasonable efforts to mitigate or resolve any such claim or liability to the extent such efforts to mitigate or resolve are required by applicable law. In the event that Purchaser or Sellers shall fail to make any such commercially reasonable efforts required by applicable law, then notwithstanding anything else to the contrary contained herein, the other party shall not be required to indemnify any person for any loss, liability, claim, damage or expense that could reasonably be expected to have been avoided if Purchaser or Sellers, as the case may be, had made such efforts

10.06 No Consequential Damages Except as expressly provided herein, from and after the Closing Date, no party will be liable for any consequential, punitive, special or exemplary damages, including lost prospective economic advantage, lost profits or lost opportunity costs arising from any breach of or failure to perform under this Agreement (collectively, "Consequential Damages"), even if such party or its Affiliates knew or should have known of the existence or possibility of such Consequential Damages, and each party hereby releases and waives any claims against the other parties regarding such Consequential Damages. Accordingly, a party may only recover any actual, direct and identifiable damages with respect to such matters, *provided, however*, that this Section 10.06 shall not preclude the recovery of damages by any Indemnified Party in respect of a Third Party Claim that includes claims for consequential damages

## ARTICLE XI GENERAL PROVISIONS

11.01 Amendment and Waiver This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. By an instrument in writing Purchaser, on the one hand, or Sellers, on the other hand, may waive compliance by the other party with any term or provision of this Agreement that such other party was or is obligated to comply with or perform

11.02 Survival of Representations and Warranties. The representations and warranties contained in Sections 5.11 and 5.12 (other than the Title Warranties) shall survive the Closing solely for purposes of Article X and shall terminate at the close of business on the 12 month anniversary of the Closing Date. The Title Warranties and the representations and warranties set forth in Sections 5.21 and 6.07 shall survive the Closing solely for purposes of Article X and shall continue indefinitely. All other representations and warranties of Sellers and Purchaser set forth in this Agreement shall terminate upon the Closing. Subject to any limitations on survival contained herein, no investigation made before or after the date of this Agreement by or on behalf of Purchaser will limit or affect in any way the representations, warranties, covenants and agreements of Sellers under or pursuant to this Agreement or any Ancillary Agreement, each of which will survive any such investigation and the Closing.

Notwithstanding the foregoing, such representations and warranties shall not terminate with respect to any item as to which the person to be indemnified shall have, before the expiration of the applicable survival period, previously made a bona fide claim by delivering notice of such claim (stating in reasonable detail the basis of such claim) pursuant to Section 10.05 to the party that is required to provide the indemnification.

11.03 No Other Representations or Warranties.

(a) Except for the representations and warranties set forth in Article V, no Seller or any other Person is making any representations or warranties, written or oral, statutory, express or implied, in relation to the Business, the Acquired Assets or the Assumed Liabilities. Purchaser acknowledges that, except as expressly provided in this Agreement, no Seller or any other Person has made, and Sellers hereby expressly disclaim and negate, and Purchaser hereby expressly waives, any representation or warranty, express, implied, at common law, by statute or otherwise relating to, and Purchaser hereby expressly waives and relinquishes any and all rights, claims or causes of action against Sellers and their respective Affiliates and Representatives in connection with the accuracy, completeness or materiality of any information, data or other materials (written or oral) heretofore furnished to Purchaser, its Affiliates or Representatives by or on behalf of Sellers.

(b) Without limiting the generality of Section 11.03(a), no Seller or any other Person is making any representation or warranty to Purchaser with respect to (i) the information set forth in the Confidential Information Memorandum, dated November 2002, prepared by Lazard Frères & Co. LLC in relation to the Business, or (ii) any financial projection or forecast relating to the Business, the Acquired Assets or the Assumed Liabilities; *provided, however*, that nothing in this Section 11.03(b) shall have any effect on any representation or warranty contained in this Agreement. With respect to any projection or forecast heretofore furnished to Purchaser, its Affiliates or Representatives by or on behalf of Sellers, Purchaser acknowledges that (A) there are uncertainties inherent in attempting to make such projections and forecasts, (B) it is familiar with such uncertainties, (C) it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all such projections and forecasts furnished to it and (D) neither Purchaser nor any of its Affiliates or Representatives shall have any claim or cause of action against Sellers or any of their respective Affiliates or Representatives with respect thereto.

11.04 Entire Agreement This Agreement, the Ancillary Agreements and the Confidentiality Agreement, along with the Schedules and Exhibits hereto and thereto, contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. Neither party shall be liable or bound to any other party in any manner by any representations, warranties or covenants relating to such subject matter except as specifically set forth herein or in the Ancillary Agreements or the Confidentiality Agreement. Nothing herein shall affect Purchaser or its Affiliates' obligations, claims, dealings, or agreements with any of Sellers or their Affiliates on any subject matter other than the subject matter hereof (*i.e.*, the purchase of the Acquired Assets from Sellers).

11.05 Notices All notices or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by facsimile or sent, postage prepaid, by registered, certified or express mail or reputable overnight courier service and shall be deemed given when received, as follows:

- (a) if to Purchaser,

Nextel Spectrum Acquisition Corp  
2001 Edmund Halley Drive  
Reston, VA 20191  
Attention: Thomas Seneca, Senior  
Manager of Strategic Finance  
Fax: (703) 433-4730

with a copy (which shall not constitute notice) to

Nextel Communications, Inc  
2001 Edmund Halley Drive  
Reston, VA 20191  
Attention: Leonard Kennedy, General Counsel  
Fax: (703) 249-5901

and with a copy (which shall not constitute notice) to

Jones Day  
41 South High Street  
Columbus, OH 43215  
Attention: Gregory A. Gorospe, Esq  
Fax: (614) 461-2658

- (b) if to Sellers or any Seller or Agent,

WorldCom, Inc.  
22001 Loudoun County Parkway  
Ashburn, VA 20174  
Attention: John M Coakley  
Director, Corporate Development  
Fax: (601) 460-5239

with a copy to.

WorldCom, Inc.  
1133 19<sup>th</sup> St, N W  
Washington, DC 20036  
Attention: Roland J. Behm, Esq  
Fax: (202) 736-6085

and with a copy (which shall not constitute notice) to

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Simeon Gold, Esq.  
Fax: (212) 310-8007

11.06 No Third-Party Beneficiaries, Liability, Non-Recourse This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such successors and assigns, any legal or equitable rights hereunder. Sellers shall be jointly and severally liable hereunder, *provided, however*, that, except for the obligations of USFCo under Section 7.30, no past, present or future director, officer, employee, incorporator, member, partner or stockholder of any party hereto, which is not otherwise a party hereto, shall have any liability for any obligations or liabilities of the parties to this Agreement or the Ancillary Agreements or for any claim based on, in respect of, or by reason of, the Acquisition and the transactions contemplated hereby and thereby.

11.07 Attorney Fees. A party in breach of this Agreement shall, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement. The payment of such expenses is in addition to any other relief to which such other party may be entitled.

11.08 Interpretation; Exhibits and Schedules; Certain Definitions.

(a) The headings contained in this Agreement, in any Exhibit or Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Nothing in the Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Schedule identifies the exception with reasonable particularity and detail, and each Schedule creates such an exception only to the extent the applicable representations and warranty refer to such Schedule by number. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein, shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated.

(b) Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural.

forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(c) Any agreement, instrument, statute or regulation defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute or regulation as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes or regulations) by succession of comparable successor statutes or regulations and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns

11.09 Assignment This Agreement and the rights and obligations hereunder shall not be assignable or transferable by Purchaser or Sellers (including by operation of law in connection with a merger or consolidation of Purchaser or Sellers) without the prior written consent of the other parties hereto. Notwithstanding the foregoing, Purchaser may assign its rights hereunder (including its rights to purchase any of the Acquired Assets) to (i) one or more Affiliates of Purchaser or (ii) after the Closing, to any assignee or transferee of all or a portion of the Acquired Assets, *provided, however*, that in no event will any such assignment relieve Purchaser from any obligation or liability under this Agreement. Any attempted assignment in violation of this Section 11.09 shall be void.

11.10 Severability If any provision of this Agreement (or any portion thereof) or the application of any such provision (or any portion thereof) to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to any other Persons or circumstances.

11.11 Submission to Jurisdiction; Consent to Service of Process

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all Proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 11.05 hereof; *provided, however*, that if the Bankruptcy Cases have closed, the parties agree to unconditionally and irrevocably submit to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute

(b) The parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Law, any objection which they may now or hereafter have to the laying of



venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby brought in any court specified in Section 11.11(a) above, or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 11.05.

11.12 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS SET FORTH IN THIS SECTION 11.12.

11.13 Construction. Purchaser and Sellers hereby acknowledge that (i) Purchaser and Sellers jointly and equally participated in the drafting of this Agreement and all other agreements contemplated hereby, (ii) both Purchaser and Sellers have been adequately represented and advised by legal counsel with respect to this Agreement and the transactions contemplated hereby, and (iii) no presumption shall be made that any provision of this Agreement shall be construed against any party by reason of any role in the drafting of this Agreement or any other agreement contemplated hereby.

11.14 Governing Law. This Agreement shall be governed by and construed in accordance with the Bankruptcy Code and internal laws of the State of New York, without regard to the conflicts of law principles thereof, except that any provisions contained herein relating to the conveyance of interests in real property shall be governed by the substantive laws of the State in which the real property is located, in each case without regard to the conflict of law principles thereof or of any other jurisdiction.

11.15 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

11.16 Appointment of Agent. Each Seller hereby irrevocably appoints WorldCom (the "Agent") as its agent and attorney-in-fact, with full power to execute and deliver any documents and instruments, and to perform any other act, arising under or pertaining to this Agreement, the Escrow Agreement or the other Ancillary Agreements, and the transactions contemplated hereby or thereby, including to waive any right or remedy of, or make any election

or give any instructions on behalf of, Sellers, to settle or compromise any dispute between any or all of Sellers, on the one hand, and Purchaser or Escrow Agent on the other hand, or to receive payments on behalf of all or any of Sellers. The appointment of the Agent being coupled with an interest, it shall be irrevocable and shall be binding upon Sellers and their successors and assigns, and shall not be revoked by the dissolution of any thereof. The Agent shall be authorized to receive service of process on behalf of Sellers in any Proceeding, and any such service of process shall have the same effect as if served upon all Sellers. Any notice or communication to, or payment to, the Agent provided in accordance with this Agreement or the Escrow Agreement shall be effective as notice upon or communication to, or payment to, all Sellers for all purposes of this Agreement, the Escrow Agreement and all other Ancillary Agreements. Without limiting any other provision of this Section 11.16, Sellers shall be obligated at all times to designate and maintain an Agent with the powers and authorities described in this Section 11.16.

[Signature page follows]

IN WITNESS WHEREOF, Sellers, Purchaser and USFCo have duly executed this Agreement as of the date first written above

WORLD COM, INC  
WORLD COM BROADBAND SOLUTIONS, INC.  
WIRELESS ONE, INC  
E L. ACQUISITION, INC  
CS WIRELESS SYSTEMS, INC.  
CS WIRELESS BATTLE CREEK, INC  
TRUVISION WIRELESS, INC  
TRUVISION-FLIPPIN, INC.  
WIRELESS VIDEO ENTERPRISES, INC.  
CC WIRELESS, INC.  
CROSS COUNTRY WIRELESS, INC  
SOUTHERN WIRELESS VIDEO, INC.  
CROSS COUNTRY TELECOMMUNICATIONS,  
INC  
WIRELESS VIDEO ENHANCED SERVICES  
WIRELESS VIDEO SERVICES

By \_\_\_\_\_  
Name Michael D Capellas  
Title President

NEXTEL SPECTRUM ACQUISITION CORP.

By: \_\_\_\_\_

Name: John Willmoth

Title: Vice President

UNRESTRICTED SUBSIDIARY FUNDING  
COMPANY

By: \_\_\_\_\_

Name: John Willmoth

Title: Vice President

## **SCHEDULES**

Schedule 1 01(a)	Investments
Schedule 1 01(b)	Knowledge of Purchaser
Schedule 1 01(c)	Knowledge of Sellers
Schedule 2 02(i)	Real Property Leases
Schedule 2 02(ii)	Owned Transmission Towers
Schedule 2 02(iv)	Company FCC Licenses
Schedule 2.02(v)	Company Pending Applications
Schedule 2.02(vi)	Acquired Spectrum Leases
Schedule 2 02(xii)	Third Party Licenses
Schedule 2 07(d)	Disputed Cure Amounts
Schedule 3.03	Purchase Price Adjustment
Schedule 3.07	Post-Closing Adjustment
Schedule 4.03(a)(ii)	Third Party Licenses – Payment Amounts
Schedule 5.03	No Conflicts
Schedule 5.04	Governmental Filings, Consents
Schedule 5 05	Transactions with Affiliates
Schedule 5.06(a)	Title to Personal Property – Exceptions
Schedule 5 06(b)	Asset Condition
Schedule 5 07(c)	Real Property Leases – Liens
Schedule 5 07(d)	Real Property Leases – Exceptions
Schedule 5.08	Tower Subleases
Schedule 5 09(a)	Contracts
Schedule 5 09(b)	Contracts - Exceptions
Schedule 5 11(b)	Company FCC Licenses – Exceptions
Schedule 5 11(d)	Company Pending Applications – Exceptions
Schedule 5 11(e)	Constructed Facilities – Exceptions
Schedule 5.11(i)	Required Secondary Licenses
Schedule 5.12(b)	Acquired Spectrum Leases – Exceptions
Schedule 5 12(c)	Leased FCC Licenses – Proceedings
Schedule 5 12(d)	Leased Pending Applications
Schedule 5 12(e)	Leased Pending Applications – Exceptions
Schedule 5.13(b)	Third Party Licenses – Proceedings
Schedule 5.13(c)	Third Party Pending Applications
Schedule 5.13(d)	Third Party Pending Applications – Exceptions
Schedule 5.14	Tax Matters
Schedule 5.15(a)	Proceedings
Schedule 5 15(b)	Judgments - Exceptions
Schedule 5.16	Compliance with Applicable Laws
Schedule 5.18	Non-Ordinary Course, Certain Changes
Schedule 5.19	Network Equipment
Schedule 5.22	Interference Coordination Agreements
Schedule 5.23	Copyright
Schedule 5.25(a)	Acquired WCS Agreements

Schedule 5.25(b)	Acquired WCS Agreements – Enforceability
Schedule 7.01	Operation of Acquired Assets Prior to Closing
Schedule 7.03(b)	Commercially Reasonable Efforts – HSR
Schedule 7.22	Short Term Leases
Schedule 7.26	Common Equipment
Schedule 8.02(g)	FCC Approval